

REMARKS

Claims 37-40 remain in this application. Claims 37, 39 and 40 have been amended.

The specification has been amended to update a cross reference to a related application.

Reconsideration of the rejection of claims 37-40 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,097,940 to Tekulve et al. ("Tekulve") is requested. It is believed that amended claims 37-40 are not anticipated by Tekulve at least for the reasons given below.

Regarding claim 37, Tekulve does not disclose or suggest in any way, shape or form "a control assembly coupled to the first section and to the second section, the control assembly being configured to initially raise the second section to the raised position and then lower the second section to the lowered position as the first section is raised from the lowered position to the raised position." Instead, Tekulve's automatic contouring mechanism 80 is configured to raise the thigh section 38 from a lowered position (about 0°) to a raised position (a maximum of 18° to 20°) as the back section 34 is raised from a lowered position (about 0°) to an intermediate position (about 35°). However, Tekulve's automatic contouring mechanism 80 is not configured to lower the thigh section 38 from the raised position (about 18° to 20°) to the lowered position (about 0°) as the back section 34 is raised from the intermediate position (about 35°) to a raised position (a maximum of 60°). As stated by Tekulve's at column 6, lines 14 et seq., "The length of plates 86 and locking links 98 are arranged to provide optimum thigh section elevation conjointly with elevation of the head section 34. It has been found desirable to provide a maximum of 18° to 20°. *This maximum is reached at an inclination of the head end section 34 of about (35°). The head section 34 may be elevated to a maximum of (60°), however, no appreciable change in thigh section elevation occurs.*" (*Italics provided.*)

Regarding claim 38, Tekulve does not disclose or suggest in any way, shape or form "a control assembly coupled to the first section and coupled to the second section, the control assembly being configured to move the second section from the lowered position to the raised position as the first section moves from the lowered position to the intermediate position, and the control assembly being configured to move the second section from the raised position to the lowered position as the first section moves from the intermediate position to the raised position."

Regarding claim 39, Tekulve does not disclose or suggest in any way, shape or form "a first thigh section drive coupled to the back section and the thigh section such that the thigh section moves from the lowered position to the raised position as the back section moves from the lowered position to the intermediate position and such that the thigh section moves from the raised position to the lowered position as the back section moves from the intermediate position to the raised position."

Regarding claim 40, Tekulve does not disclose or suggest in any way, shape or form "a first thigh section drive coupled to the back section and the thigh section to initially raise the thigh section to the raised position and then lower the thigh section to the lowered position in response to movement of the back section from the lowered position to the raised position."

Claims 37-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U. S. Patent No. 6,643,873. A terminal disclaimer is submitted herewith in compliance with 37 C.F.R. 1.321(c) to overcome the aforesaid double patenting rejection. A check in the amount of \$110.00 to cover the fee for this Terminal Disclaimer is enclosed.

Claims 37-40 are now in condition for allowance and such action is respectfully requested. If the Examiner believes that a telephonic interview would expedite the allowance of this application, he is requested to contact the undersigned for a prompt resolution of any outstanding issues.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages and other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435, with reference to file 7175-73312. A duplicate copy of this authorization is enclosed.

Respectfully submitted,
BARNES & THORNBURG



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